IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 02..02..2007

Coram

The Hon'ble Mr. Justice K.CHANDRU

C.R.P.(PD) No. 1170 of 2004

1. K.P.Balaji

2. K.P.Chakrapani .. Petitioners/Plaintiffs

vs.

1. M.Seshadri

2. S.Kalavathi .. Respondents/Defendants

Petition filed under Article 227 of the Constitution of India for the reasons as stated therein.

For Petitioners : Mr.V.Lakshmi Narayanan
For Respondents: No Representation

ORDER

This Civil Revision Petition has been filed against the order of dismissal dated 10.11.2003 passed in I.A.No.487 of 2003 in O.S. No.426 of 1996 on the file of the Sub-Judge, Hosur.

2. The plaintiffs are the revision petitioners and the present revision petitions are filed challenging the order of the Sub-Court, Hosur, dated 10.11.2003 made in I.A.No.487 of 2003 in O.S.No.426 of 1996. An interim application was filed by the petitioners pending the suit for the purpose of considering the objections raised by them with regard to the admissibility of the alleged sale receipt dated 30.5.1990 produced by the defendant during the trial.

3. The suit was instituted by the plaintiffs for passing a decree for the cancellation of the suit sale deeds dated 11.12.1995 and to declare them as sham and nominal by the first defendant in favour of the second defendant and also for declaration of the titles of the plaintiffs with reference to the suit items and for a specific performance of delivering the suit items to them respectively. The respondents herein filed written statement wherein a plea was raised by them with reference to the sale receipt coupled with the General Power of Attorney. A rejoinder was filed by the plaintiffs

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refuting the sale receipt stating that the said documents have been created fraudulently and they are not stamped in terms of Section 48 (c) of the Indian Stamp Act. Then, they raised the admissibility of the said documents before the trial Court by filing the interim application in I.A. No.487 of 2003 and contended that under Section 17 (b) of the Registration Act, the registration of the sale receipt is compulsory and since the said document creates transfer of rights and titles and interest as a deed of conveyance, stamp duty should be paid on the said document as otherwise, it is not admissible in evidence. The respondents filed a counter statement stating that it does not attract any stamp duty and it is only a pointer towards general power of attorney executed by the parties.

4. The trial Court after hearing the parties, passed an order dated 10.11.2003 stating that Section 35 of the Indian Stamp Act is not a bar for accepting the present document and it can be admitted in evidence for collateral purposes. The Court also referred to the earlier proceedings initiated by the petitioners / plaintiffs before this Court in C.R.P. No.27 of 2000 challenging the earlier order dated 03.12.1999 in I.A. No.427 of 1998. In that, this Court, by an order dated 06.3.2002, disposed of the Civil Revision Petition by directing the trial Court to give an opportunity to the defendant to file additional written statement after accepting the amendment made by the petitioners / plaintiffs.

5. I have carefully gone through the arguments of Mr.V.Lakshmi Narayanan, learned counsel appearing for the revision petitioners and the respondents neither present nor been represented by any counsel and have perused the records.

6. With reference to the maintainability of the revision petition under Article 227 of the Constitution of India, the following decisions are somewhat helpful to the case of the petitioners.

(i) In the decision reported in 2003 (3) M.L.J. 436 [Salem Co-operative Society Sugar Mill Limited, Mohanur vs. Kuppannan], this Court has held that in order to meet the ends of justice and to avoid miscarriage of justice particularly, when there is a flagrant violation both on the merits of the case as well as equity in justice, inherent jurisdiction of the High Court under Article 226 of the Constitution of India can be invoked.

(ii) Further, in the decision reported in 2002 (1) SCC 319 [Ouseph Mathai and others vs. M.Abdul Khadir], the Supreme Court has held that wrong decisions may not be a ground for exercise of jurisdiction under Article 226 of the Constitution of India unless the wrong is referable to grave dereliction of duty and flagrant abuse of power of subordinate Courts and Tribunals resulting in grave injustice to the parties. It is useful to extract

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paragraph 4 of the aforesaid judgment, which reads as follows:

> "Para 4: It is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said article as a matter of right. In fact power under this article casts a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority an that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this article unless the wrong is referable to gave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party."

(iii) In the decision reported in (2003) 6 SCC 641 [State through Special Cell, New Delhi vs. Navjot Sandhu alias Afshan Guru and others], the Supreme Court, in paragraph 28, held as follows:

> "Para 28: Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used to meet the ends of justice. They can be used to interfere even with an interlocutory order. However the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such

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> discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate courts and tribunals within the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised "as the cloak of an appeal in disguise."
>
> [Emphasis added]

Therefore, the present petition filed under Article 227 of the Constitution of India is clearly maintainable, in view of the bar created under Section 35 of the Indian Stamp Act being overlooked by the trial Court.

7. Coming to the merits of the objections raised by the petitioners, it is necessary to refer to the following decisions:

The Calcutta High Court vide its judgment reported in 2002 (2) CLJ 449 [Biswajit Chakraborty vs. Mira Sen Ray] while dealing with a case where an objection was raised that the document tendered was insufficiently stamped, observed as follows:

> "My reading of the provisions of Sections 33,35,38,39,40 & 61 of the Indian Stamp Act, 1899 is that when a document is tendered in evidence by a party and an objection is raised by the other side that the document is insufficiently stamped, at that stage, the court assumes the jurisdiction to impound the document as it was obligatory to apply the mind of the court in accordance with the relevant provisions of the said Act. The object of Section 33 is to protect the revenue and as such the court or such person, as referred to in the said section, must however, exercise the powers as envisaged under the said section, if necessary *suo motu*, irrespective of the raising of objection by any of the party."

8. In another decision reported in 2005 (1) CLJ (Cal.) 249 [Mujibar Rahman Mondal v. Md.Abdulla Molla and others], the Calcutta High Court held as follows:

> "... The court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an 'exhibit' in the case. Once

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a document has been marked as an "exhibit" in the case and has been used by the parties in examination and cross-examination of their witnesses, Section 36 comes into operation. Once a document has been admitted in evidence, it is not open either to the trial court itself or to a court of appeal or revision to go behind that order. In the case on hand, the document in question was marked exhibit with objection which leads to show that the objection as to admissibility on the ground that the instrument is not duly stamped has not been judicially determined but it was merely postponed with tentatively marking it as an "exhibit". In such circumstance, the said provision of Section 36, in my view is not attracted..."

9. The Supreme Court in its recent decision reported in JT 2006 (9) SCC 483 [Shyamal Kumar Roy v. Sushil Kumar Agarwal] after referring to these two decisions, observed in paragraphs 14 and 17 as follows:

"Para 14: Objection as regards admissibility of a document, thus, is specifically required to be taken that it was not duly stamped. On such objection only the question is required to be determined judicially.

..... ..... .....

..... ..... .....

Para 17: If no objection had been made by appellant herein in regard to the admissibility of the said document, he, at a later stage, cannot be permitted to turn round and contend that the said document is inadmissible in evidence."

10. In fact, similar stand was taken by our High Court in the following reported decisions:-

(a) 2001 (1) C.T.C. 112 [A.C.Lakshmipathy and another vs. A.M.Chakrapani Reddiar and five others]

(b) 2004 (4) C.T.C. 208 [R.Deivanai Ammal vs. G.Meenakshi Ammal]

(c) 2005 (2) C.T.C. 385 [Amudha vs. K.Jayaraman]

11. For the very same proposition, the learned counsel appearing for the petitioners also relied on the decision of the Apex Court as well as our Court and they are as follows:

(a) AIR 1978 SC 1393 [Ram Rattan (dead) by legal representatives vs. Bajrang Lal and others]

(b) 1994 (1 M.L.J. 474 [Arumugha Pillai vs. Vadivel Pillai]

(c) 1998 (1) L.W. 443 [Rajamanickam and 3 others v.

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Elangovan and 4 others]

12. However, one need not multiply the decisions to decide the present revision petition. In the light of the latest pronouncement and the objection having been raised by the plaintiffs, the order of the trial Court, overruling the same, is without any basis. Therefore, the Civil Revision Petition shall stand allowed. The trial Court is directed to exclude marking the document allegedly described as a sale receipt dated 30.5.1990 and proceed with the suit in accordance with law. However, there will be no order as to costs. Consequently, C.M.P. No.11382 of 2004 will stand closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

gri

To

The Sub Judge
Hosur

+1cc to Mr.V.Raghavachari, Advocate Sr 6382

NG (CO)
km/7.2.



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